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Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x  
3 UNITED STATES OF AMERICA

4 v.

11 CR 424 (NRB)

5 EARL SETH DAVID

6 Defendant

-----x

7 New York, N.Y.  
8 April 10, 2013  
9 4:00 p.m.

10 Before:

11 HON. NAOMI REICE BUCHWALD

District Judge

12 APPEARANCES

13 PREET BHARARA

14 United States Attorney for the  
15 Southern District of New York

JANIS ECHENBERG

JAMES J. PASTORE, JR.

16 Assistant United States Attorney

17 MOSKOWITZ & BOOK LLP

Attorneys for Defendant David

18 AVI MOSKOWITZ

19 M. TODD PARKER

20 -also present-

21 DEIDRE GORDON HSI

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(In open court)

THE DEPUTY CLERK: 11 CR 424 United States v. Earl Seth David.

Is the government present and ready to proceed?

MS. ECHENBERG: Yes. Good afternoon, your Honor. Janis Echenberg and James Pastore for the government. With us at counsel table is Deidre Gordon from Homeland Security Investigations.

THE DEPUTY CLERK: Is defense counsel present and ready to proceed?

MR. MOSKOWITZ: Yes. Good afternoon, your Honor. Avi Moskowitz and Todd Parker for Mr. David who is seated in between us.

THE COURT: Let me begin, as I always do, by confirming that I have received all the submissions that I should have.

First, I have the sentencing letter of Mr. Moskowitz with 24 exhibits dated March 8. Then I have another letter enclosing additional letters from family and friends dated March 11. Then sequentially there is the government's which sentencing memorandum is undated. Then there is Mr. Moskowitz's response to the government's memorandum dated April 8. And, finally, I guess where I should have began is the report of the probation office dated March 26.

So, my first question to you is whether there are any

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1 other documents that I should have received in connection with  
2 the sentencing?

3 MR. MOSKOWITZ: No, your Honor.

4 MS. ECHENBERG: Nothing from the government, your  
5 Honor.

6 THE COURT: Let me confirm that both parties have  
7 received a copy of the report of the probation office.

8 MR. MOSKOWITZ: We have, your Honor. I've reviewed it  
9 with Mr. David.

10 THE COURT: Do you have any objections to it?

11 MR. MOSKOWITZ: Your Honor, the final report contains  
12 all of the objections that I made to the initial report and  
13 various footnotes. Other than what's in the report currently  
14 in those footnotes, I have no objection.

15 THE COURT: OK.

16 MS. ECHENBERG: The government has received it and  
17 reviewed it, and we have no objection.

18 THE COURT: I think, Mr. Moskowitz, the floor is  
19 yours.

20 MR. MOSKOWITZ: Thank you, your Honor.

21 I begin, your Honor, by noting that what I think is  
22 pretty obvious; that this is a difficult case. It's difficult  
23 because Mr. David has committed and pled guilty to very serious  
24 crimes. It is also difficult, however, because, as I think we  
25 indicated in our sentencing memo, there is substantial

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1 mitigating circumstances in this case.

2 I think from the beginning, your Honor, the government  
3 has somewhat successfully, portrayed Mr. David as an evil,  
4 diabolical criminal who maliciously defrauded both the  
5 government and his clients for more than a decade.

6 Now, Earl has admitted and accepts full responsibility  
7 for his crimes, but the mitigation that we have pointed out in  
8 our submission explains somewhat how he got into that  
9 situation. Significantly, Judge, I think from my conversations  
10 with the government, that there is really no dispute that  
11 Mr. David suffers from significant mental illness. We  
12 submitted two detailed reports of very established, recognized  
13 mental health experts that detail exactly the nature of Earl's  
14 mental illness. He suffers both from significant bipolar  
15 disorder which went undiagnosed until his arrest in this case,  
16 and is still untreated, and a chronic and complex posttraumatic  
17 stress disorder which goes back to probably his teenage years,  
18 if not earlier.

19 Now, I point this out, Judge, and I say that I want it  
20 very clear, it is not our position that Earl's mental illness  
21 excuses his behavior. The criminal conduct here was  
22 inexcusable and that's why he pled guilty, and that's why he's  
23 accepted responsibility, but it does go a long way towards  
24 explaining what happened and how it happened over such a long  
25 period of time.

1           Your Honor, I'm sure this is not the first time your  
2 Honor has dealt with someone who suffers from bipolar disorder,  
3 but my understanding, based on my experience in the business,  
4 so to speak, when someone has bipolar disorder and has manic  
5 episodes, they are very productive, but in a crazy way. They  
6 view themselves as vulnerable and as super human. Their  
7 reality testing and reality understanding is way off, and they  
8 do things -- and they have extremely poor judgment. That is  
9 classic and characteristic of people with bipolar disorder.  
10 And that behavior, the behaviors that the government pointed  
11 out that your Honor heard about at trial, are typical of people  
12 that suffer from bipolar disorder. Again, it's not an excuse,  
13 but it is an explanation.

14           If your Honor looked carefully at the report of  
15 Dr. Drob, he specifically talks about the types of things that  
16 would cause someone suffering from this illness to do what Earl  
17 did. He wrote that "Earl has a serious impairment in reality  
18 testing, which causes him to fail to anticipate the  
19 consequences of his behavior and to exhibit poor  
20 decision-making and judgment."

21           He then wrote, "As a result of his mental disorder,  
22 poor reality testing, impaired judgment and impulsivity,  
23 Mr. David is compromised in his capacity to adequately control  
24 his behavior and to fully appreciate the wrongfulness of his  
25 conduct. While he understands that his behavior in his

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1 immigration law practice was illegal, he focused his own mind  
2 on what he believed would be the good that he was doing for his  
3 clients. The defendant's capacity to adequately appreciate the  
4 wrongfulness of his behavior was fueled by his seriously  
5 impaired reality testing and his consequent failure to separate  
6 fantasy from reality."

7 And he concluded that "As a result of his mental  
8 disorders, he suffered from a diminished capacity to exercise  
9 adequate judgment, to fully appreciate the wrongfulness of his  
10 conduct, and to control behavior that he ultimately understood  
11 to be unethical and illegal."

12 Again, I stress, we are not minimizing the conduct.  
13 We are not excusing the conduct, but there can be little doubt  
14 that his mental illness contributed significantly to the  
15 behavior.

16 Now, I focused till now on the bipolar disorder, but  
17 as discussed at length in the psychological reports, there's  
18 another component to Earl's mental illness, and that is the  
19 PTSD, the posttraumatic stress disorder. And that, while it  
20 doesn't relate directly to the criminal conduct, it kind of  
21 gives you an understanding of what kind of life Mr. David has  
22 lived till now. What Dr. Gordon's report shows, and it was a  
23 lengthy social history that was done based on interviews both  
24 of Mr. David and family members and friends that have known him  
25 for a long period of time, is that he has had a particularly

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1 difficult life marked with significant tragedies and traumas.

2           Your Honor read, I'm sure, about what's probably the  
3 defining trauma in Mr. David's life, which is the accident  
4 which took his mother's life when he was 14. In that accident,  
5 Earl was in the car, his mother was thrown from the window, was  
6 essentially cut in half, and her blood splattered all over  
7 Earl. Now, today, today we would understand that a child who  
8 goes through that needs counseling and needs help and needs  
9 something to help him recover.

10           Unfortunately, Earl's father -- and I don't know why;  
11 maybe it was the times, maybe it was the European background, I  
12 don't know why -- but Earl never got a moment's worth of  
13 counseling. And I think that Dr. Gordon's report indicates  
14 he's never really recovered from that trauma. The way that has  
15 manifested itself is while he's recovered enough to function in  
16 society, clearly, he graduated college and law school, he had a  
17 law practice, you can see the effects of some of those traumas  
18 in his personal life.

19           Earl has had two failed marriages. His first wife who  
20 worked in the law practice for a period of time took all his  
21 money and took his son -- Carey, by the way, is here, flew up  
22 from Florida; it's important to his father -- and took him and  
23 took him to Florida. That was a very difficult event in  
24 Mr. David's life. He initially had sought custody of his son,  
25 but having gone through the loss of his own mother, decided to

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1 give up Carey and let him be with his mother. But Earl's  
2 managed to maintain a relationship with him. Carey wrote to  
3 the Court and has shown his support by coming up here today.

4 Earl's second wife, as your Honor probably knows from  
5 reading the report, was herself severely mentally ill, and,  
6 remarkably, Earl was the healthy one in that relationship, or  
7 the healthier one in that relationship. She had a psychotic  
8 break. She, among other things, was found naked in the park  
9 one day and shortly thereafter jumped out the third floor  
10 window of their apartment. Earl, to his credit, didn't abandon  
11 her. He took care of her until he couldn't any more. And they  
12 ultimately got divorced.

13 Now, Earl has managed to re-marry, and his wife  
14 Salome, also known as Hia, is here with their son who is a  
15 little over a year old. As your Honor knows, he was born after  
16 Mr. David's arrest in Canada on this case a little over a  
17 year -- about a year and a half ago.

18 I think it's interesting to note that despite the  
19 tragedies that Earl has suffered, particularly in his childhood  
20 or maybe because of it, he's worked hard to maintain a  
21 relationship and develop a relationship with his children, and  
22 Carey's coming up here today all the way from Florida is  
23 indicative that even though they were separated by distance,  
24 Earl has managed to maintain a relationship, and one of which  
25 was strong enough that Carey on his own chose to come up here.



1           It's also, your Honor, the experience of having lost a  
2 parent as a child that makes this whole situation so painful  
3 for Earl because he is now out of his son's life, the baby son.  
4 His son is living in Canada with his mother. There is no  
5 money. And as a result, she comes down here once every four  
6 months, every five months. I think he's seen his son in the  
7 five and a half -- in the 18 months or so that he's been  
8 incarcerated, maybe three or four times. So it's very  
9 difficult and painful for him, this separation.

10           It's significant, Judge, that while many people have  
11 gone through what Earl has gone through, might have become  
12 bitter and taken it out on other people, Earl has gone in the  
13 other direction and has spent his private time trying to do  
14 good and trying to help people. And that is evidenced by the  
15 letters that your Honor received from friends and family, and  
16 particularly from numerous community members, particularly  
17 senior citizens who Earl helped by driving them to synagogue,  
18 driving them to shopping, picking up their groceries, and doing  
19 other acts of kindness.

20           Your Honor, many defendants who come into this court  
21 have done good things, contributed to charity, and all of that  
22 is laudable. What makes Earl different than some of them is  
23 Earl is not talking about giving his money. He's talking about  
24 giving his time and giving up his of his humanity to try and  
25 help other people. That doesn't excuse anything that he did,

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1 but, again, it is something that weighs in his favor when the  
2 Court considers whether he is really the monster that the  
3 government is trying to paint him as.

4 I just want to touch briefly, Judge, on some of the  
5 other 3553(a) factors that the Court obviously should consider.  
6 The government has contended that a guideline sentence is  
7 necessary to deter Earl, and I significantly and seriously  
8 dispute that.

9 First of all, I think Earl has exhibited and shown his  
10 real remorse. He waived expedition after his son was born. He  
11 came here. He proffered shortly after he came, attempting to  
12 cooperate. He pled guilty shortly after he came, and he did  
13 that -- his proffers were, I will tell the Court, it's very  
14 unusual that right up front the government says, you can  
15 proffer, but we don't think we'll ever give him a 5K. That was  
16 the first proffer. He agreed to do it anyway.

17 When the government called -- in the months prior to  
18 trial, when Ms. Echenberg and Mr. Pastore called, it was made  
19 very clear that he's not getting a cooperation agreement. He  
20 can come in. He can answer our questions. If we think that  
21 he's told the truth, we'll let the Court know about that, but  
22 he isn't getting a 5K. He's not getting a cooperation  
23 agreement. And Mr. David agreed to do that. I think it was  
24 really not very fair of the government to downplay that. It's  
25 not every day that a defendant comes in with no promises, in

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1 fact, with negative promises, and says, sure, I'll help you  
2 out, I'll answer your questions, no promises. And, in fact, he  
3 got, if anything, very little for it.

4 And what's significant, Judge, from my position as a  
5 practitioner, is by agreeing to talk to the government,  
6 answering their questions in late last year, Mr. David agreed  
7 to put off his sentencing which was scheduled for December of  
8 last year. The result of that, Judge, was that rather than  
9 sentencing Mr. David on a cold record, your Honor got to hear a  
10 trial at which Mr. David was vilified by both sides without an  
11 opportunity to defend himself and that could -- I don't think  
12 it can help, but taint the Court's view or influence the  
13 Court's view, I should say, of Mr. David.

14 I will tell the Court, it was a strong consideration  
15 as to whether or not we were going to go ahead with that  
16 because there is an advantage to arguing this out without your  
17 Honor having heard a one-sided defenseless presentation of what  
18 Mr. David is and what he's like and so on.

19 The point of all this, your Honor, is Mr. David has  
20 done everything he can to show remorse, to show that he's  
21 accepted responsibility, and, yes, he's got a very bad past.  
22 He's done a lot of things that were wrong. Your Honor, the  
23 biggest factor that I think you should consider in terms of  
24 what kind of sentence Earl needs to be deterred is till this  
25 case, till I had him evaluated and reports came in, his mental

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1 illness was never diagnosed and never treated. Now that it has  
2 been diagnosed, he can get the treatment that he needs.  
3 Clearly, he's going to need medication, which he hasn't gotten,  
4 but which now that there's a diagnosis -- and, hopefully, the  
5 Bureau of Prisons will give him the appropriate medication --  
6 it can go a long way towards controlling the type of manic  
7 behavior that got him into this trouble in the first place.  
8 That should give the Court some comfort that a long prison  
9 sentence is not necessary to deter him.

10 With respect to the question of general deterrence,  
11 your Honor, for others similarly situated, whether it's two  
12 years or three years or four years, that type of sentence for  
13 someone like Earl, others like Earl, is a significant sentence.  
14 Giving him six or seven years as the guidelines call for is  
15 simply not necessary. It's more than is required. Judge  
16 Rakoff has pointed that out ad nauseam in terms of the types of  
17 sentences imposed in similar type cases. He's pointed out that  
18 for a defendant like this with his background, this type of  
19 sentence it is more than necessary; you can do much less and  
20 still have the same deterrent effect, and it would deter not  
21 only specifically, but generally, people in a similar  
22 situation.

23 I point out, Judge, that every day that Mr. David has  
24 spent in jail has been very, very difficult for him. It  
25 started in Canada where the commissions, as I understand it,

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1 were not as luxurious, we should say, as the conditions at the  
2 MCC, they're even harsher. And here at the MCC for a year and  
3 a half, it has been no picnic. And he's felt this. He's a man  
4 of slight stature. He's been threatened. He's been beaten.  
5 This has not been an easy stretch for Mr. David.

6 As for what is just punishment and respect for the  
7 law, I submit, as I did in my letter, Judge, that the guideline  
8 sentence or the recommended guidelines range here is not  
9 necessary to achieve either a just punishment or respect for  
10 the law. I think, in fact, one can make the argument that if  
11 the sentence is too harsh, the opposite would be true. I think  
12 that a guideline sentence here would not reflect the mitigating  
13 factors appropriately and adequately, and I'd ask the Court to  
14 weigh the mitigation as well as the seriousness of the crime.

15 Finally, Judge, one last point. Obviously, Earl is  
16 not alone in this, but it is certainly true and something that  
17 the Court can consider. When the client's family is outside  
18 the country, the impact of incarceration is that much more  
19 difficult. Earl's wife is not an American citizen. She is not  
20 even a Canadian citizen. She is of Mexican nationality. She  
21 lives in Canada with their baby. She can't come and live in  
22 the United States at this point. She doesn't have a means of  
23 support even if she could come, and, as a result, Earl is  
24 isolated. His teenage son lives in Florida and comes up every  
25 few months when he can. His wife comes every few months when

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1 she can with the baby, but he's really isolated, and, as a  
2 result, every day that he spends is, in many respects, that  
3 much more difficult than that served by the average inmate.  
4 And I think that is something the Court can consider in  
5 fashioning a sentence.

6 So, your Honor, I ask the Court to recognize not only  
7 the crimes that Earl has committed, but the fact that he has  
8 accepted responsibility, he's shown remorse, and there are  
9 substantial mitigating factors, particularly his mental  
10 illness, and I ask the Court to weigh all of those factors and  
11 impose a sentence below the recommended guidelines range to  
12 reflect not only his crime but also the mitigation.

13 Thank you.

14 THE COURT: Mr. David, would you like to say anything?

15 THE DEFENDANT: Yes, I would, your Honor. I'm very  
16 nervous, so just bear with me.

17 THE COURT: That's fine, if you'd like to stay seated,  
18 that's fine also.

19 THE DEFENDANT: OK. Thank you, your Honor.

20 Your Honor, the Assistant U.S. Attorneys, the special  
21 agents, my lawyer, my son, my wife, my baby, my son are here  
22 for my support. I would like to state for the record that what  
23 I say today comes from my heart and my soul. I always speak  
24 the truth, so help me God. I am truly remorseful, contrite,  
25 repentful for my criminal activity that landed me in jail for

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1 the past 547 days and nights, which are very long, dark and  
2 mentally painful. This has given me much time to reflect and  
3 introspect.

4 I'm ashamed, embarrassed and humiliated for breaking  
5 the law. I know what I -- I recognize what I did was wrong. I  
6 take full responsibility for my actions, and I can only blame  
7 myself for my downfall and destruction. I regret my past what  
8 I did. I truly regret my past actions. If I could change the  
9 past, I would. Unfortunately, I cannot. I stand before this  
10 Court as a disbarred attorney and as a broken and humble human  
11 being. I made the wrong choices and decisions, and I'm paying  
12 severely for the consequences of my former actions by staying  
13 in jail far away from my family.

14 But let me make this clear to the Court, I broke the  
15 law, and I deserve to be punished. I've learned my lesson. I  
16 got the message. I will never repeat that mistake again of  
17 breaking the law. I am deterred for the rest of my life from  
18 committing any crime. Since my arrest and my incarceration, I  
19 have learned to respect and obey the law.

20 I keep in touch with my wife and infant son, and Carey  
21 by phone, email and letters.

22 During the past 12 months, I was evaluated by mental  
23 health professionals, and I learned for the first time I suffer  
24 from bipolar disorder which significantly contribute to my poor  
25 decision-making. I also suffer from posttraumatic stress

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1 disorder, which also explains why I have been unable to escape  
2 the recurring and horrible nightmares for the car accident  
3 which killed my mother, Frances David, when I was 14.

4 Your Honor, I was originally scheduled to be sentenced  
5 on August 15, 2012. My lawyer adjourned the date with the  
6 Court's permission to December 12, 2012. Moreover, a period  
7 prior to my sentencing, the U.S. Attorney's Office contacted my  
8 lawyer if I was willing to cooperate in regards to the upcoming  
9 trial of my co-defendants that was to be held in January 2013.  
10 In good faith and without hesitation and without any promise  
11 and any letter of cooperation, I took the responsibility to  
12 voluntarily assist the government. I spent many hours with the  
13 Assistant U.S. Attorneys, the special agents, my lawyer as we  
14 went over the evidence assisted in trial. They treated me with  
15 dignity and respect.

16 Your Honor, I want to make right whatever wrong I have  
17 done in my past. I will consciously live with the memory of  
18 this crime for the rest of my life. I won't repeat it ever  
19 again. I intend to educate the public. I promise to respect  
20 and obey the law, and not be in danger of committing any crime.

21 Life is full of situations and events that come our  
22 way that require us to make choices and decisions. I will  
23 carefully weigh the consequences of my actions, and I'll make  
24 the right choices and decisions. Your Honor, I will attend  
25 mental health counseling as well. I know I need mental health.



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1 I will get that mental health, your Honor.

2 For the past -- your Honor, for the past 18 months, my  
3 family is suffering with pain and anguish over my imprisonment  
4 through no fault of their own but because of my stupid actions.  
5 I have not been there for holidays or birthday parties and am  
6 basically out of their life. I'm like the living dead cut off  
7 from society. My wife is like a widow, and my children are  
8 like orphans. I only saw my infant son five times since he was  
9 born, and now I didn't see him yet, but now the six time. My  
10 wife has informed me he is walking. I don't know my own son.  
11 I can only blame myself.

12 Carey has been kind enough to come up to me several  
13 times. He is here, your Honor. You asked about him when I  
14 first came. He's been a very strong support for me, your  
15 Honor. I appreciate it.

16 Your Honor, I am concerned and worried that if I'm  
17 handed a lengthy sentence, I am going to lose my family, and my  
18 wife is struggling. In jail you do learn what's really  
19 important in life, and that is your freedom and your family. I  
20 will never take that for granted again.

21 Please let me reenter society so that I can re-build  
22 my life, be a productive member of the community, a loyal  
23 husband to my wife, Salome, a mentor and father to my son,  
24 Carey, and a loving and caring father to my infant son, Jacob,  
25 who I don't even know.

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1 I will respect and obey your order as well. I will  
2 not let this Court down. I don't smoke. I don't drink. I  
3 don't do drugs, heaven forbid. I just want the privilege to  
4 work hard to support my family. Please tender just mercy and  
5 please mete out my sentence with kindness and leniency, if not  
6 for my wife's sake, at least for my children's sake.

7 Thank you and God bless you.

8 THE COURT: Ms. Echenberg.

9 MS. ECHENBERG: Yes, your Honor. Thank you.

10 As your Honor is aware, this case represents one of  
11 the largest immigration frauds that was ever committed in the  
12 United States. It spanned 13 years. It involved 25,000  
13 applications, at least, that were fraudulent. And Mr. David  
14 was the mastermind of that fraud. I don't think the government  
15 has tried to portray him as evil or diabolical or as a monster.  
16 I think what we have tried to portray in our submission and the  
17 way that the facts of this case portray him is as the  
18 architect, as the mastermind of this fraud.

19 The scheme was his brain child. He identified the  
20 loophole with labor certifications that could allow people to  
21 claim they were hiring people when they really weren't. He  
22 recruited almost all of the people that participated in the  
23 fraud. A lot of them were his former clients and his family  
24 members. He trained all of them in how to commit this fraud,  
25 and he also coached the sponsors, the people who claimed to

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1 employ aliens. He coached them as to what they should say if  
2 immigration came calling.

3 At every opportunity, Mr. David avoided detection and  
4 he avoided prosecution. When he was disbarred, he set up a  
5 separate office in an apartment building, and he got other  
6 lawyers to put their name on the law firm door, but he  
7 continued to run the fraud secretly.

8 And then when the agents started investigating the  
9 fraud, he left the country. He went to Canada, and he  
10 continued to be very actively engaged with the fraud remotely.  
11 He continued to fill out paperwork. He continued to coach and  
12 advise other people as to how to conduct the fraud, and he  
13 mediated disputes among the employees from abroad.

14 And when he was finally arrested, he continued to  
15 deceive. He lied in a hearing before the Canadian court. He  
16 lied about why he was in Canada, but ultimately after being  
17 confronted several times, he conceded that, yes, he was  
18 continuing to conduct legal business related to a New York law  
19 firm even though he had lost his New York license.

20 As we mentioned in our submission, this was not the  
21 first time that Earl David was engaged in illegal conduct. In  
22 the 1990s, he was involved in another financial fraud. He was  
23 caught, and he cooperated and he got immunity for that. At the  
24 same time that he was cooperating and getting immunity, he was  
25 getting this other fraud, this massive immigration fraud going.

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1 So he was undeterred. He didn't stop. He just kept going and  
2 committed an even worse, even more expansive fraud.

3 He claims that he was merely trying to help his  
4 clients, and that's what drew him to commit this fraud. And  
5 while that may have been a piece of it, most of these clients  
6 weren't really helped. A lot of them, at most, got a year of  
7 work authorization when they had paid to get full permanent  
8 residency.

9 Now, we don't argue that the clients were deceived in  
10 the sense that they were legitimately entitled to those  
11 benefits. The clients were certainly part of the fraud as  
12 well, but they paid large amounts of money thinking that they  
13 were going to get permanent residency, and part of Mr. David's  
14 fraud was to substitute one client for another and get more and  
15 more money from different clients. So clients that thought  
16 they were on a path to a permanent residency lost the benefits  
17 that they thought they had paid for, and most of the time they  
18 didn't even know that they were out of status. So any claim  
19 that he was truly trying to help people is really disingenuous.

20 Mr. David profited handsomely from this fraud. He  
21 agreed as part of his plea to forfeit \$2.5 million to agree to  
22 a \$2.5 million forfeiture order, which represents his proceeds  
23 from the fraud. We've laid out in our submission the type of  
24 income that he was receiving; but just to give your Honor a  
25 brief summary, prior to 2006, so from 1996 to 2006 when he was

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1 in the office running the fraud every day, a very low estimate  
2 is that clients were being charged \$5,000 each, and there were  
3 thousands and thousands of clients, and Mr. David was taking  
4 the lion's share of those payments.

5 In 2006 when he went to Canada, at first he was  
6 getting ten percent of the profits through another  
7 co-defendant, and even he admits that clients were being  
8 charged even more in that later time period.

9 We have records showing \$98,000 going to him --  
10 laundered to him through the "Code of the Heart," his book, in  
11 2007 and 2008. So any claim that he wasn't making money from  
12 this fraud really doesn't hold up.

13 With regard to his cooperation, we certainly didn't  
14 intend to downplay what he did. In our submission, we  
15 dedicated a paragraph to letting your Honor know that he did  
16 meet with us. He met with the government initially when he  
17 first came here, but at that point really the fraud had been  
18 uncovered because he had been avoiding detection for so long,  
19 that the agents had really figured out the fraud and figured  
20 out the participants so there really wasn't substantial  
21 assistance that he could provide at that point.

22 It is true that we communicated with Mr. Moskowitz  
23 shortly before trial in particular regarding a defendant who  
24 ultimately pled shortly before trial, but we did meet with  
25 Mr. David, and we don't dispute that he answered our questions

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1 honestly, and, in particular, during trial through his lawyer  
2 he did respond very quickly to a question that we asked. So we  
3 don't downplay that, but we don't think that that warrants a  
4 below guideline sentence given the scope of the fraud and the  
5 conduct here.

6 While Mr. David's personal circumstances are tragic,  
7 we don't think that excuses his behavior, and it does not  
8 warrant a below guideline sentence. The first time that the  
9 government saw the psychological evaluations was when we  
10 received the submission, the same as your Honor, and we are not  
11 in a position to dispute the diagnosis, nor would we dispute  
12 the diagnosis, but we do disagree that bipolar disease is what  
13 led him to commit this crime.

14 We agree with the defense that it's quite surprising  
15 that someone who is purportedly so severely mentally ill could  
16 commit this massive, multilayer, very sophisticated crime. As  
17 Dr. Drob said in his report, there's no question that the  
18 defendant understood that his behavior was both illegal and  
19 wrong. He knew what he was doing. In committing this fraud,  
20 he was calculating, he was deceptive, and he remained  
21 undeterred for over a decade.

22 Ultimately, we agree with the probation department,  
23 that while the defendant's mental health issues and traumatic  
24 childhood certainly merit consideration by the Court, they do  
25 not warrant a sentence outside of the guidelines range of 78 to

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1 97 months.

2 Given the scope of the fraud, given Earl David's role  
3 in the fraud, and particularly the fact that he used his legal  
4 training to commit this fraud, it's the government's view that  
5 a guideline sentence here is appropriate.

6 THE COURT: Did you want to respond at all? I'm not  
7 requiring it.

8 MR. MOSKOWITZ: Judge, I understand that. Two brief  
9 points, relatively minor. First of all, obviously we're not  
10 claiming that Mr. David didn't make money. He made money from  
11 the scheme. I think that's obvious. What is worth noting,  
12 however, is even when he was in Canada, supposedly hiding,  
13 according to the government, he was filing tax returns and  
14 paying taxes on the money that he was making and reporting  
15 where he was on his tax returns. So it kind of undercuts the  
16 argument that he's hiding when he's hiding in plain sight --

17 THE COURT: I don't think they said he was hiding. I  
18 think they said --

19 MR. MOSKOWITZ: The government's claim was that he ran  
20 away to hide.

21 THE COURT: Well, that's pretty documented in the  
22 trial record.

23 MR. MOSKOWITZ: Your Honor, I obviously was not able  
24 to address the trial record or the witnesses who said so,  
25 but --

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1           THE COURT: No, there are documents. It's not a  
2 matter of believing people.

3           MR. MOSKOWITZ: Your Honor, the point is he -- even  
4 when he's making this money, he is reporting it, he's paying  
5 taxes on it. And the issue with the mental health problems  
6 here, Judge -- and I tried to make this argument; maybe I  
7 didn't make it clear enough -- the fact that he suffers from  
8 bipolar disorder doesn't mean he's not intelligent, doesn't  
9 mean he's not capable, doesn't mean he can't function to a  
10 certain degree in society. The problem was that the illness  
11 severely impacted on his judgment and his ability to control  
12 his actions. And that's the point.

13          THE COURT: All right. Nobody -- no psychologist, no  
14 psychiatrist, no licensed social worker is going to tell  
15 anybody that a manic episode lasts for 13 years. So there is  
16 just a limit as to how far he can go with this.

17               (Pause)

18          THE COURT: Considerable time has been spent reviewing  
19 the lengthy submissions, both from the probation department,  
20 from the defense and from the government.

21               To explain the sentence that I will impose, let me  
22 start by discussing the seriousness of the crime. I think it  
23 was very clear from the submissions that most of the people, if  
24 not all of them, who submitted letters, really were not  
25 informed about what Mr. David's criminal activity was here. I



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1 think it's important because, of course, the seriousness of the  
2 crime is central to any sentence, but it's also important for  
3 people in the courtroom to be more aware of what was involved  
4 here.

5 We begin with the length of the crime. Mr. David has  
6 pled to having been involved in this immigration fraud from  
7 1996 to 2009, a period of 13 years. There is also the question  
8 of the extent of the criminal activity. As the government  
9 mentioned, the number of applications, most of which were  
10 fraudulent, numbered roughly 25,000. There was a serious  
11 consequence to this. The result was a distortion of the  
12 immigration system. Individuals undeserving received benefits  
13 to which they were not entitled, but inevitably it also  
14 affected the deserving because there are not unlimited  
15 resources, and there is not unlimited staff.

16 To the extent that the clients of the David Law Firm  
17 and its successors were not active fraudsters themselves,  
18 presumably these were not wealthy people who did not have a  
19 spare \$2,000 or \$5,000 to lose if they did not get the benefit  
20 they hoped for.

21 This enterprise, the David Law Firm was also  
22 incredibly complex, and it needed to be to accomplish the  
23 fraud. It needed many employees, including employees with a  
24 variety of language skills to facilitate a fraud clientele, and  
25 the number of defendants involved in this case is, I believe,

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23; and if I'm right, 16 of them were employees of the firm. I find it particularly significant and disturbing that Mr. David did not hesitate to recruit relatives and the vulnerable, and I very much doubt that were it not for his manipulative ways, that these people would have become involved in the crime that they did. So much for the suggestion that he is simply a kind soul who would never want to hurt anyone. The truth is he hurt the people that he got involved in his scheme. The enterprise had multiple sequential locations and needed to have individuals with multiple skills to carry out the fraud.

The David lawyers, accountants, people with computer skills, needed an insider at the department of labor, needed phony sponsors, and eventually it was the creation of connection to Canada so that Mr. David could continue to participate after he left the country clearly to avoid potential prosecution.

There has been a lot of downplaying of the amount of money involved, but let's do a little math. \$2,000 per client times 25,000 clients is \$50 million. Up to 3,000 per client, you get to \$75 million. This was very lucrative. Apart from this crime, Mr. David has demonstrated an inability to conform his conduct to the law. He committed securities fraud back in 1991, and he did cooperate. So he disgorged \$10,000 and paid a fine of \$5,000. As a consequence, he was suspended as a lawyer both in New Jersey and New York, and at the time he argued to

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1 the disciplinary boards the same kind of mitigating argument  
2 that he's making today.

3 But it didn't work as a wakeup call. He continued to  
4 practice law and committed this fraud, and then he sought to be  
5 reinstated to the bar of New Jersey, and there's no reason to  
6 believe much of what he told them. And we know that even after  
7 he got arrested here, he was found to have been lying to a  
8 Canadian judge by that judge.

9 Now, the defense has placed a great deal of emphasis  
10 on the report of Simone Gordon and Dr. Drob. I start by  
11 accepting the proposition of the presentation of the defendant  
12 as having had a difficult and traumatic childhood, and have no  
13 doubt that there are lasting consequences of those experiences  
14 which would affect an individual's interpersonal relationships.  
15 But the issue for purposes of sentencing is not whether the  
16 defendant has entered into bad marriages or made bad marriage  
17 choices or has additional emotional needs as a consequence, but  
18 whether the residual emotional consequences of the defendant's  
19 childhood are responsible for his criminal behavior.

20 Neither Dr. Drob nor Ms. Gordon denied that Mr. David  
21 knew the difference between right and wrong, both as an ethical  
22 and as a legal matter. And it's absolutely obvious that the  
23 therapists were never provided with the details of the  
24 complexity of this scheme which, in my view, drastically  
25 undermines their suggestion that his psychological conditions

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1 caused him to engage in a decade or more than a decade of  
2 crime.

3 Further, there is no suggestion by anyone that having  
4 bipolar disorder causes individuals to engage in immigration  
5 fraud, let alone, as I mentioned earlier, having manic episodes  
6 that last for 13 years.

7 As I noted earlier, the defendant used a somewhat less  
8 involved version of this argument to avoid a longer suspension  
9 from the bar. Nevertheless, despite the awareness of the  
10 psychological issues, which he used to his advantage, Mr. David  
11 chose not to address those issues, but instead to rely on his  
12 untreated issues to avoid the guideline sentence here.

13 Quite frankly, both conclusory statements of the  
14 retained experts and his counsel are internally inconsistent  
15 and to me fundamentally illogical and unpersuasive.

16 So I do not doubt that Mr. David, like many criminals,  
17 has found a way to rationalize his long-standing and repeated  
18 conduct, but the proffered rationalization here is just blatant  
19 nonsense. Try as he will to justify his crime and the dollars  
20 that he made by claiming that he was just bringing families  
21 together, this immigration fraud had nothing to do with  
22 reuniting families. It was about getting labor certifications  
23 to keep people here, most of whom probably had their families  
24 here, and any relationship to bringing family members into this  
25 country was a very distant one at best.

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1           So, having considered all of these factors, I am going  
2 to sentence Mr. David to 60 months in custody. I'm placing him  
3 on supervised release for two years. I can say now that I will  
4 release him from supervised release if he chooses to leave the  
5 United States at the conclusion of his sentence, terminate it  
6 early.

7           There is a special assessment of \$200 imposed. I will  
8 recommend to the Bureau of Prisons that he be placed in a  
9 facility where he may receive treatment for his mental health  
10 issues. And I impose the mandatory standard and special  
11 conditions set out at pages 29 to 30.

12           Mr. Moskowitz.

13           MR. MOSKOWITZ: Your Honor, two relatively minor  
14 issues. I understand the Court's recommendation with respect  
15 to a facility where he can get mental health treatment. If it  
16 is available in Otisville, I would ask the Court to recommend  
17 that as a place where, among other things, his religious needs  
18 can be taken care of, your Honor.

19           THE COURT: I can, if you want, recommend Otisville  
20 and leave it at that.

21           MR. MOSKOWITZ: That would be great.

22           THE COURT: And you and he can make the appeals to the  
23 prison authorities for whatever you want.

24           MR. MOSKOWITZ: Thank you, your Honor. And with  
25 respect to the credit for time already served, obviously --

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1 THE COURT: He doesn't get credit for the time in  
2 Canada, I believe, under the law.

3 MR. MOSKOWITZ: Well, I'd ask if the Court can  
4 recommend that he be given --

5 THE COURT: I was going to give him five and a half  
6 years, so he's already -- and I dropped it to five, so he's  
7 already gotten it.

8 MR. MOSKOWITZ: Thank you, your Honor.

9 MS. ECHENBERG: Your Honor, if your Honor could just  
10 state on the record -- I assume you adopt the PSR the  
11 guidelines range.

12 THE DEFENDANT: I think the guidelines calculation is  
13 totally correct. It was pled to, and one might note  
14 inconsistent with the argument, that he agreed to points as  
15 being an organizer and leader. So the suggestion that was made  
16 by Ms. Gordon which was really amazing that he was -- he did  
17 not have the traits to execute this plan. That's my point from  
18 before. No one really chose to tell her what was really  
19 involved here, so she could go and write this. But it just  
20 doesn't conform to the reality.

21 MS. ECHENBERG: Three other very quick points, your  
22 Honor. I assume your sentence is concurrent on the two counts.

23 THE COURT: Sure. And supervised release as well.

24 MS. ECHENBERG: And we wanted to move to dismiss  
25 Counts Two and Four, and also ask that your Honor sign the

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1 order of forfeiture that we had passed up.

2 THE COURT: I've just signed the order of forfeiture,  
3 and the Counts Two and Four are dismissed.

4 MR. MOSKOWITZ: Thank you, your Honor.

5 THE COURT: All right.

6 MS. ECHENBERG: And although the defendant pled guilty  
7 and he has waived his right to appeal a sentence that is out of  
8 the guidelines range, if you could advise him.

9 THE COURT: Sure. Absolutely. The defendant is  
10 advised that both I think he waived it in his plea agreement  
11 that he has the right to appeal the sentence I've imposed  
12 within 14 days.

13 MR. MOSKOWITZ: Thank you, your Honor.

14 MS. ECHENBERG: Thank you, your Honor.

15 (Adjourned)

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